IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.796 OF 2006

Sholay Premises Coop.Society
Ltd. .. Petitioner

Versus

Smt.Kamala Balakiram Puri .. Respondent

Mr.J.B.Chinai, Senior Counsel with Sandeep Bhagwat for petitioner

Mr.N.N.Bhadrashetye for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 22nd February 2006.

P.C.

. Rule. Returnable forwith by consent.

Respondents waive service.

2. Heard Mr.Chinai, learned Senior Counsel for petitioner and Mr.Bhadrashetye for respondents. Petitioner is original respondent in Appeal No.123 of 2005 which has been decided by the impugned order. By the order under challenge, passed on 20th January 2006. learned Member of Cooperative Appellate Court has set aside the order of the Cooperative Court in Dispute No.CCIV/147 of 2005 rejecting an application for interim injunction.

3. Respondents are original disputants who have preferred a dispute in Cooperative Court Mumbai and the principal relief claimed therein vide prayer clause (b) is as under:-

> "(b) The opponent society be permanently restrained by an order and injunction of this Hon’ble Court from

adding, altering, changing or deleting name of the disputants or the entries and/or the endorsement made on the backside of the share certificate No.6 having Distinctive Nos. 26 to 30 (both inclusive) and any other records of flat No.6 in the opponent society and also permanently restrained by an order and injunction not to create any third party right by virtue of deleting the name of the disputants and recording illegally anybody's name on the said share certificate No.6 and/or any other records of the flat No.6 in the opponent society"

4. In prayer clause (d) an interim injunction is claimed to the effect that the petitioner opponent be restrained by an order and injunction of the Cooperative Court not to change resolution No.7 passed in Managing Committee

meeting held on 11th July 1995 in respect of adding the name of one Balkiran V. Purie as joint member of flat No.6 in the opponent society.

5. In prayer clauses (e) and (f) what the disputant prayed for is a restraint order not to add, alter or create any third party rights by virtue of deleting the name of disputant or recording anybody's name in the share certificate or any other records in respect of flat No.6 of the society for dispossessing or interfering with disputant's peaceful, exclusive possession, use occupation and enjoyment of the flat in question. Prayer clauses (b) and (g) of the dispute application which is filed on 27th April 2005 are in the nature of final reliefs.

6. After hearing Mr.Chinai and Mr.Bhadrashetye and perusing with their assistance the averments in the dispute and more

particularly those in paras 10, 11 and 12, in my view, the dispute having been instituted after completion of the alleged illegal act and the trial court having refused interim injunction by its order dated 16th September 2005, allowing the appeal challenging such order means restoration of status quo ante. The impugned resolution is passed in a meeting which is already convened. Grievance of the respondents original disputants is that this resolution is bad in law because it is purporting to recall and/or set aside an earlier resolution which is passed as early as in 1995. Considering the nature of this plea and the parties viz., disputants as well as their daughter in law already locked in a battle in civil court, it was not necessary for the lower appellate court to have passed a restraint order and/or injuncted the society from acting upon this resolution. The lower appellate court has granted interim injunction in terms of prayer clauses (a) and (b) of the application for

interim injunction preferred by respondents. I have reproduced the final prayers in the dispute and referred to the other prayers in some what details only for this reason that the dispute itself proceeds on the basis that resolution passed in 1995 is recalled and such recalling or setting aside of an earlier resolution after 9 years is patently illegal. A declaration is sought in the aforesaid terms.

7. Reply of petitioner society is very clear because it is the petitioner's case that the said resolution is passed by the managing committee in its meeting convened on 17th October 2004 and thereafter endorsed by general body on 6th February 2005.

8. In the aforesaid facts and circumstances, I am unable to accept the contention of Mr.Bhadrashetye that firstly, it is not open for petitioner society to challenge the order of the

appellate court as there is no resolution of the society resolving and deciding to present a petition under Article 226 and 227 of the Constitution of India. Secondly, I am unable to accept the contention of Mr.Bhadrashetye that passing of such a resolution and deleting and/or restoring the name of a person, whose name, the disputants have resolved jointly not to appear in the share certificate, would mean that their civil rights are adversely affected. In my view, this apprehension is not well founded. The resolution pertaining to the suit flat does not prevent parties from prosecuting remedies in civil court nor does it prevent present respondents from urging that their son as well as daughter in law have no right, title and interest in the suit flat and it exclusively belongs to them. Thirdly, the contention of Mr.Bhadrashetye that during the pendency of this civil litigation and after a period of nine years, the society should not have taken such a step and it is with

a view to assist parties in the civil litigation that such measure has been initiated and taken is also without any force, at this stage. In my view, the observations in order under challenge or it being set aside does not prevent disputants from raising such contentions when the dispute is being tried on merits. Needless to state that the society's action cannot override the orders of competent civil court which decids right, title and interest in respect of the flat in question.

9. In these circumstances, the order under challenge cannot be sustained. It is accordingly set aside. However, the petitioner society shall not disturb the physical possession of the disputants in respect of suit flat nor shall it make any alterations and/or further change in the records of the society including the share certificate till the hearing and final disposal of the dispute.

10. In the interest of both sides, it would be desirable that the cooperative court hears the dispute expeditiously. All contentions on merits of both sides are expressly kept open. Cooperative Court shall endeavour and dispose of the application within a period of six months from today. Needless to state that the observations made in this order as well as the order impugned shall not influence the cooperative court while deciding the dispute.

11. Rule is made absolute accordingly.

(S.C.DHARMADHIKARI, J)